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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/618,140

07/10/2003

Albert K. Chin

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4442

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EXAMINER

LANG, AMY T

ART UNIT

PAPER NUMBER

3731

MAIL DATE

DELIVERY MODE

05/09/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.		Applicant(s)	
	10/618,140		CHIN, ALBERT K.	
	Examiner		Art Unit	
	AMY T. LANG		3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 February 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) 10 and 11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>02/22/2008, 01/18/2008</u> . | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

Priority

1. The later-filed application must be an application for a patent for an invention which is also disclosed in the prior application (the parent or original nonprovisional application or provisional application). The disclosure of the invention in the parent application and in the later-filed application must be sufficient to comply with the requirements of the first paragraph of 35 U.S.C. 112. See *Transco Products, Inc. v. Performance Contracting, Inc.*, 38 F.3d 551, 32 USPQ2d 1077 (Fed. Cir. 1994).

The disclosure of the prior-filed application, Application Nos. 10/369,980, 60/148,130, 60/150,737, and 09/738,608, fails to provide adequate support or enablement in the manner provided by the first paragraph of 35 U.S.C. 112 for one or more claims of this application. Specifically, the applications cited above do not specifically disclose the claimed method steps.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

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1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. **Claims 1-9** are rejected under 35 U.S.C. 103(a) as being unpatentable over Vaska (US 6,237,605 B1).

With regard to **claim 1**, Vaska discloses a surgical procedure performed on the heart of a patient to surround and isolate the pulmonary veins (see entire document). The procedure comprises forming an entry incision in a subxiphoid location and placing an ablation device through the incision (column 3, lines 8-22). The device is then inserted through an incision formed in the pericardium and beyond the left superior pulmonary vein (column 9, lines 30-46). Next, the ablation probe contacts the pericardial reflection superior to the right superior pulmonary veins (column 9, lines 46-52).

However, Vaska does not specifically disclose the instantly claimed steps of forming an opening in the first, second, and third reflections to surround and isolate the left and right pulmonary veins. Since Vaska discloses a method to surround and isolate the pulmonary veins in a patient and teaches that is known by one of ordinary skill in the art to cut and form openings in the reflections (column 10, lines 9-18), it would have been obvious to one of ordinary skill at the time of the invention for Vaska to perform the steps instantly claimed. Therefore, Vaska would disclose a method of surrounding and isolating the left and right pulmonary veins by forming an incision in a subxiphoid location and forming openings in the claimed reflections.

With regard to **claim 2**, the ablation probe of Vaska is energized to ablate atrial tissue (column 5, line 27 through column 6, line 64).

With regard to **claim 3**, it is the examiner's position that forming an entry incision in a subxiphoid location would inherently comprise exposing the linea alba absent evidence to the contrary.

With regard to **claim 4**, it is the examiner's position that forming an incision in a subxiphoid location, a subcostal location, to surround and isolate the pulmonary veins would intrinsically comprise exposing the anterior rectus sheath, retracting the rectus muscles, incising the posterior rectus sheath, and forming a tract through the incisions and the muscular diaphragm into the pleural cavity absent evidence to the contrary.

With regard to **claims 5-7**, it is the examiner's position that forming openings in the claimed reflections would intrinsically include grasping a portion of each reflection to form an aperture therein, absent evidence to the contrary.

With regard to **claim 8**, Vaska also discloses the use of an endoscope with the ablation device (column 7, lines 54-58).

With regard to **claim 9**, Figure 2E discloses wherein the ablating device forms a loop.

Response to Arguments

5. Applicant's arguments filed 02/20/2008 have been fully considered but they are not persuasive. Specifically Applicant argues that the method of Vaska is used to perform electrocardiographic mapping of the heart and does not form openings in the

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pericardial reflections. However, Vaska specifically teaches a method of ablation for treatment of atrial fibrillation (column 1, lines 11-16)). Furthermore, as stated above, since Vaska discloses a method to surround and isolate the pulmonary veins in a patient and teaches that is known by one of ordinary skill in the art to cut and form openings in the reflections (column 10, lines 9-18), it would have been obvious to one of ordinary skill at the time of the invention for Vaska to perform the steps instantly claimed. Therefore, Vaska would disclose a method of surrounding and isolating the left and right pulmonary veins by forming an incision in a subxiphoid location and forming openings in the claimed reflections. This clearly overlaps the instant claims.

Conclusion

Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amy Lang whose telephone number is (571) 272-9057. The examiner can normally be reached on Monday - Friday, 8:30 a.m. - 5:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Todd Manahan can be reached on 571-272-4713. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

05/06/2008
/Amy T Lang/
Examiner, Art Unit 3731

/Todd E Manahan/
Supervisory Patent Examiner, Art Unit 3731